

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BAYWAY LINCOLN MERCURY, INC.	§	
d/b/a BAYWAY LINCOLN; WISCH AUTO	§	
GROUP, INC. d/b/a BAYWAY	§	
CHEVROLET; WISCH MOTORS, INC. d/b/a	§	
BAYSHORE CHRYSLER JEEP DODGE;	§	
BAYWAY AUTO SALES, INC. d/b/a	§	
BAYWAY VOLVO, and	§	
WISCH AUTO SALES, LLC d/b/a WINNIE	§	
CHRYSLER DODGE JEEP RAM,	§	CIVIL ACTION NO: 4:19-CV-3817
	§	
Plaintiffs,	§	
	§	
V.	§	
	§	
UNIVERSAL UNDERWRITERS	§	
INSURANCE COMPANY,	§	
	§	
Defendant.	§	

**DEFENDANT UNIVERSAL UNDERWRITERS INSURANCE COMPANY’S
FEDERAL NOTICE OF REMOVAL**

Under 28 U.S.C. §§ 1441 and 1446, Defendant, Universal Underwriters Insurance Company (“UUIC”), files its Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division, based on diversity of citizenship, and amount in controversy, and respectfully shows the following:

I. Procedural Background

1. On August 23, 2019, Plaintiff Bayway Lincoln-Mercury, Inc. d/b/a Bayway Lincoln, Wisch Auto Group, Inc. d/b/a Bayway Chevrolet, Wisch Motors, Inc. d/b/a Bayshore Chrysler Jeep Dodge, Bayway Auto Sales, Inc. d/b/a Bayway Volvo, and Wisch Auto Sales, LLC d/b/a Winnie Chrysler podge Jeep RAM (“Plaintiffs”), filed its Original Petition in a case styled *Bayway Lincoln-Mercury, Inc. d/b/a Bayway Lincoln, Wisch Auto Group, Inc. d/b/a Bayway Chevrolet, Wisch*

Motors, Inc. d/b/a Bayshore Chrysler Jeep Dodge, Bayway Auto Sales, Inc. d/b/a Bayway Volvo, and Wisch Auto Sales, LLC d/b/a Winnie Chrysler podge Jeep RAM v. Universal Underwriters Insurance Company; Cause No. 2019-59314, pending in the 234th Judicial District Court for Harris County, Texas.

2. UUIC received a copy of this suit on September 3, 2019 and has made an appearance in this case.

3. UUIC files this notice of removal within 30 days of receiving notice of Plaintiffs' Original Petition. *See* 28 U.S.C. § 1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *see id.*

4. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. § 1446(a).

5. Attached hereto are copies of the following documents:

- **Exhibit 1:** The state court's Docket Sheet;
- **Exhibit 2:** Plaintiffs' Original Petition;
- **Exhibit 3:** Citation Served Upon Defendant;
- **Exhibit 4:** Defendant's Original Answer;
- **Exhibit 5:** List of Parties and Counsel;

II. Bases for Removal

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. Plaintiffs and Defendant UUIC are diverse.

7. **Plaintiffs** are Texas entities with principal offices in Harris, Chambers, and Brazoria Counties.

8. **Defendant** Universal Underwriters Insurance Company is an Illinois corporation engaged in the insurance business with a statutory home office and its principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196. UUIC is authorized to transact business and has transacted business in Texas. UUIC is therefore not a citizen of the State of Texas.

9. This lawsuit is between citizens of different states, and there is complete diversity of citizenship between Plaintiffs and Defendant.

B. The Amount in Controversy Exceeds the Jurisdictional Requirements for Subject Matter Jurisdiction.

10. Plaintiffs allege that Defendant is liable under a commercial insurance policy because Plaintiffs made a claim under that policy and allegedly Defendant wrongfully adjusted and underpaid Plaintiffs' claim. Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims. *See Stockman v. Fed. Election Comm'n*, 138 F.3d 144, 151 (5th Cir.1998). An action in state court may be removed to federal court if "the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441. To establish diversity jurisdiction under 28 U.S.C. § 1332, the parties must be diverse, and the amount in controversy must exceed \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332; *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882 (5th Cir. 2000). Plaintiffs' Original Petition states that it seeks monetary relief over \$1,000,000. As such, Defendant satisfied this Court's amount in controversy requirement for federal jurisdiction.

C. This Removal is Procedurally Correct

20. UUIC received notice of this lawsuit on September 3, 2019 when UUIC was served. Thus, UUIC is filing this Notice within the 30-day time period required by 28 U.S.C. § 1446(b).

21. Venue is proper in this District and Division under 28 U.S.C. §1446(a) because i) this District and Division include the county in which the state action has been pending, and ii) a substantial part of the events giving rise to Plaintiffs' claims allegedly occurred in this District and Division.

22. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

23. Promptly after UUIC files this Notice of Removal, written notice of the filing will be given to Plaintiffs pursuant to 28 U.S.C. §1446(d).

24. Promptly after UUIC files this Notice of Removal, a true and correct copy of same will be filed with the Clerk of the Harris County District Court pursuant to 28 U.S.C. §1446(d).

25. Based upon the foregoing, the exhibits submitted in support of this removal, and other documents filed contemporaneously with this Notice of Removal, Defendant Universal Underwriters Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/George Arnold

George H. Arnold – Attorney in Charge

State Bar No. 00783559

Raymond M. Kutch

State Bar No. 24072195

One Riverway, Suite 1400

Houston, Texas 77056

Telephone: (713) 403-8210

Facsimile: (713) 403-8299

garnold@thompsoncoe.com

rkutch@thompsoncoe.com

**ATTORNEYS FOR DEFENDANT
UNIVERSAL UNDERWRITERS INS. CO.**

CERTIFICATE OF SERVICE

This is to certify that on October 3, 2019, a true and correct copy of the foregoing document was delivered to all counsel of record in accordance with the Federal Rules of Civil Procedure as follows:

Shields Legal Group, P.C.
James D. Shields
Jennifer S. Stoddard
Bart F. Higgins
16301 Quorum Drive, Suite 250B
Addison, Texas 75001

E-mail: jshields@shieldslegal.com
jstoddard@shieldslegal.com
bhiggins@shieldslegal.com

Attorneys for Plaintiffs

/s/ George Arnold
George Arnold